U.S. Department of Homeland Security
20 Massachusetts Ave N.W. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: Vienna, Austria Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (hereinafter, OIC), Vienna, Austria. The applicant, through counsel, filed a timely appeal with the Administrative Appeals Office. The appeal will be dismissed.

The applicant is a native and citizen of Lithuania who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant's spouse, [redacted] hereinafter [redacted] is a beneficiary of the Diversity Visa Program, [redacted] and her (and the applicant's) children were granted immigrant visas. The applicant was denied an immigrant visa because the Immigration and Naturalization Service (INS: now Citizenship and Immigration Services, hereinafter, CIS) determined that in 1999, the applicant had violated the terms of his nonimmigrant visa by engaging in unauthorized employment in the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse and children.

The OIC concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge dated April 23, 2004.*

On appeal, counsel contends that [redacted] lawful permanent resident of the United States, and her (and the applicant's) children, also lawful permanent residents of the United States, will experience extreme hardship if she is separated from the applicant after 20 years of marriage. Counsel also asserts that the applicant was mistakenly found inadmissible to the United States because of alleged unauthorized employment. In support of the appeal, counsel submitted a brief; an undated letter from [redacted] a letter dated May 14, 2004 from [redacted] of the Psychiatric Health Center at the [redacted] Clinic in Lithuania; and a copy of the United States Department of State's *Lithuania: Country Reports on Human Rights Practices, 1999* (hereinafter, DOS Report). The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United

> States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The Applicant was admitted to the United States at New York, New York on July 22, 1999 as a Visitor for Business with authorization to stay until October 21, 1999. The applicant departed the United States on October 19, 1999. On March 29, 2000 the applicant applied for admission to the United States as a Visitor for Pleasure. When the applicant was questioned about his prior visit to the United States, he admitted that he had worked for approximately 45 days in a friend's furniture shop, which is a violation of the terms of his status. Accordingly, the applicant was found inadmissible, and he withdrew his application for admission.

Counsel contends that the applicant was removed from the United States without any evidence of unauthorized employment in the United States, however, the record contains applicant's sworn statement admitting that he had worked in the United States, as well as a copy of a notebook that contained the applicant's work hours.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by Ms. Stelnioniene. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact of the applicant's separation from Ms. Stelnioniene. Counsel maintains that [redacted] will have difficulty

supporting herself and the children because she has a limited knowledge of English and has only been able to find an unskilled labor position in the United States. Counsel asserts that the applicant could find a higher paying job in the United States than his wife because he "almost fluently speaks English" and has a commercial drivers license. Additionally, counsel referred to the DOS Report to illustrate the low average wage rates in Lithuania; counsel states that the applicant could not support his family because of these low wage rates. The figures in the DOS Report are five years old and refer to average wages, not the applicant's actual wages. Counsel does not explain how the report relates to the applicant or a qualifying relative. The record contains a copy of the applicant's Application for Immigrant Visa and Alien Registration, which indicates that the applicant has owned a business since 1991, and that Ms. Stelnioniene is the manager of the business. Counsel did not include income figures for the applicant's business, which appears to be successful given its longevity. Presumably, the Applicant could make a meaningful contribution to the support of his family in the United States. It is possible that the family would have more disposable income if the applicant lived and worked in the United States, however, neither the applicant nor counsel submitted evidence of the applicant's income, Ms. Stelnioniene's income, or her inability to support herself and the children in the United States.

The next *Cervantes* factor examined is country conditions where the qualifying relative would live to be with the applicant. The DOS Report is the only evidence counsel submitted regarding country conditions in Lithuania. Counsel's single reference to the report relates to average income figures; that issue was addressed in the preceding paragraph. The record contains no other evidence concerning hardship related to country conditions in Lithuania.

Another *Cervantes* factor is significant health conditions, particularly if appropriate medical care is unavailable in the country where the qualifying relative would relocate. The record contains a letter dated May 14, 2004 from [redacted] of the Psychiatric Health Center at the Kaunas Sanciai Clinic in Lithuania. After the applicant's visa application was denie[redacted] raveled to Lithuania to consult with [redacted] oncluded tha[redacted] vas suffering from depression caused by the separation from the applicant. [redacted] prescribed Prozac (an antidepressant), Xanax (a minor tranquilizer), and [redacted] he recommended family psychotherapy and minimizing Ms. [redacted] separation from the applicant. Because this letter relates to the effect of [redacted] separation from the applicant, it will be discussed under the *Cervantes* factor below.

The final *Cervantes* factor analyzed is family ties and the effect of separation from family. Counsel contends tha[redacted] has been suffering from depression since learning that the applicant cannot return to the United States; counsel also maintains that the applicant's children will suffer hardship if the applicant lives in Lithuania. When [redacted] consulted [redacted] she reported that she always felt low, had trouble sleeping, felt like doing nothing, and sometimes thought of suicide because she could not live without the applicant. [redacted] stated that the children, particularly the youngest (seven years), were very upset about the separation from the applicant[redacted] diagnosed [redacted] s suffering from moderate depression, placed her on the three medications listed above, and recommended psychotherapy. There is no evidence in the record regarding [redacted] continuing treatment. The applicant has not demonstrated tha[redacted] condition goes beyond the common effect caused by such a separation. If [redacted] continues taking the prescribed medications and seeks counseling, the effect of the separation can be minimized. As lawful permanent residents of the United States, [redacted] and her

children can visit the applicant in Lithuania. Counsel refers to the expense of such visits but provided no information about the family's inability to pay for them. It should be noted that lawful permanent residents can travel outside the United States for up to one year without a reentry permit. A reentry permit is required for trips of longer than one year but less than two years. Trips of longer than two years require a returning resident visa. In other words, the family has a great deal of flexibility in traveling to Lithuania, thus minimizing the effect of the separation.

Applicant's children are not qualifying relatives, and the record contains no evidence addressing whether the hardship suffered by the children would cause extreme hardship to Ms. Stelnioniene, the qualifying relative.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that Ms. Stelnioniene will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.